



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

NK.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,576	10/18/2001	Roy Hammett	2691-18	5031

23117 7590 06/18/2003

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 06/18/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/978,576

Applicant(s)

HAMMETT, ROY

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-20 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15-20 and 22-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3727

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 17-20 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 17 states that ^{the} lower portions of the peripheral wall ~~(and the columns)~~ being of only single wall construction ~~(except for hollow caps at upper ends of the columns that are of double wall construction)~~. The drawings clearly show lower portions of the peripheral wall being of double wall construction and portions of the columns other than the hollow caps being of double wall construction. The original specification including the written specification, claims and abstract never mention the only single wall construction. **This is a new matter rejection.**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3727

X Claims 1, 3, 6, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammett ('487).

Hammett discloses a low depth bottle crate having a peripheral wall (10) of uniform height, the peripheral wall including a pair of side walls and a pair of end walls, a crate bottom connected to the peripheral wall, a plurality of substantially U-shaped cut-outs in upper portions of the side and end walls defining columns between the cut-outs, lower portions (at outer wall 10 which appears to be in the lower half of the crate as shown in the elevations of Fig. 3 and 5) of the peripheral wall adjacent the crate bottom formed as solid, continuous bands along the side walls, the lower portions of the peripheral wall and the columns being of single wall construction including hollow caps at upper ends of the columns that are of double wall construction, each of the columns, except for four corner columns, having a support buttress (the dividing wall that extends downwardly and inwardly from each respective support column) extending downwardly and inwardly from a lower edge of a respective one of the hollow caps to the crate bottom, wherein the cut-outs terminate at a ledge that separates the upper portions of the side and end walls from the lower portions of the side and end walls, the lower portions of the side and end walls are connected to the crate bottom by inwardly directed ribs (30) arranged in groups, respectively, directly below each cut-out and extending from each cut-out to the crate bottom.

Claims ~~17, 20~~ and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('277)(Apps).

For claims 17 and 20, Apps discloses a low depth bottle crate having a peripheral wall (24) of uniform height, the peripheral wall including a pair of side walls and a pair of end walls, a crate bottom connected to the peripheral wall, a plurality of substantially U-shaped cut-outs in

Art Unit: 3727

upper portions of the side and end walls defining columns between the cut-outs, lower portions (26) of the peripheral wall adjacent the crate bottom formed as solid, continuous bands along the side walls, the lower portions of the peripheral wall and the columns being of single wall construction including hollow caps at upper ends of the columns that are of double wall construction, handle cut-outs (below handles 90) are provided in lower portions of the end walls, the crate bottom having a lower surface formed with an array of recesses (upwardly recessed bottle top receiving areas 50) adapted to engage bottle caps of bottles carried in an underlying crate.

For claim 24, laterally spaced wedge elements on outside surfaces of the corner columns at the lower end of the columns at the transition from the upper portion to the lower portion can be clearly seen in Fig. 1 and 2 (no reference sign is provided in the drawings).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammett ('487) (Hammett) in view of Apps et al. ('461) (Apps).

Hammett discloses the invention except for the number of ribs in each group being three. Apps teaches a group of three ribs as shown in the bottom perspective view of Fig. 3. It would have been obvious to add more ribs to each group in order to further strengthen the entire connection of the side and end walls to the bottom.

Art Unit: 3727

X Claims 4, 5, 8-10, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammett in view of Apps et al. ('277) (Apps).

For claims 4, 5 and 8-10, Hammett discloses the invention except for the nesting ribs, the double wall thickness of the handle bars and the bottle support ribs. Apps teaches nesting ribs (80), double wall thickness handle bars as shown in Fig. 1, and bottle support ribs (79). It would have been obvious to add nesting ribs in order to provide a nesting stop so that the crates to not nest too tightly and become locked together. It would have been obvious to add another wall to make a double walled handle bar in order to reinforce the handle so that the handle doesn't break or warp when lifting a loaded crate. It would have been obvious to add a pair of bottle support ribs in order to adequately reinforce the hollow caps so that the inner wall of the hollow cap is not weakened due to repeated impact with bottles.

For claim 12 and 16, Hammett discloses the invention except for the crate bottom being devoid of interior columns. Apps teaches a crate devoid of interior columns. It would have been obvious to modify the crate by removing interior columns in order to make loading easier since interior columns would obstruct much of the interior when bottles are being positioned within the interior of the crate.

^{12, 15-20, 22 23}
Claims 1-12, 15-20, 23 and ~~24~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('277) (Apps 1) in view of Hammett ('487) (Hammett).

For claims 12, 15-20, 23 and 24, Apps 1 discloses the invention except for the connection in the middle of the handle. Hammett discloses the connection in the middle of the handle. It would have been obvious to add a connection in the middle of the handle in order to support the middle portion so that the handle doesn't weaken or break due to excessive deflection and stress

Art Unit: 3727

near the middle of the handle due to lifting of full crates. Both Apps 1 and Hammett accomplish the connection of the handle to the bottom wall by a strut extending from the handle bar to a raised pedestal on the crate bottom. The Apps 1 connection could be repeated at the midpoint of the handle or the Hammett connection could be added at the midpoint of the handle.

For claims ~~1-11, 17-20 and 24~~¹⁸⁺¹⁹, Apps 1 discloses the invention except for the L-shaped ribs. Hammett teaches L-shaped ribs. It would have been obvious to add L-shaped ribs in order to further strengthen the connection of the side and end walls to the bottom.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 1.

Apps 1 discloses a single bottle support rib for inner wall of the hollow cap. Apps 1 discloses the invention except for the pair of bottle support ribs 79. It would have been obvious to provide a pair of ribs in order to further reinforce or further protect the inner wall of the hollow cap.

Applicant's arguments filed June 4, 2003 have been fully considered but they are not persuasive.

The claim 1 limitation that the peripheral wall be continuous along the side walls, and that the lower portion of the peripheral wall and the columns be of single wall construction except for hollow caps at upper ends of the columns is met by Hammett ('478). As shown in Fig. 1 at continuous outer wall 10, an upper edge is formed for the lower portion of the peripheral wall at the ledge which extends past cut out portions and columns of the upper portion of the peripheral wall. Any double wall construction incorporates a single wall construction. There is no requirement in the claims for "only single wall construction" which would preclude constructions of two or more walls (i.e. double wall construction).

incorporate
into
Apps 1 v
Hammett

Art Unit: 3727

Claim 17 states that each handle bar is connected directly to the crate bottom. Usually a “direct” connection would preclude any member from being situated between the two components directly connected. As interpreted in this case, a direct connection can have one or several members (such as a strut and a raised pedestal in claim 12) extending between the two members being directly connected. Apps (‘277) and Hammett (‘487) disclose direct connections of the handle bar to the crate bottom insofar as such direct connection is shown in applicant’s disclosure.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

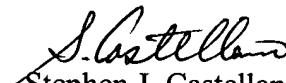
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3727

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
June 16, 2003